Berjaya Development Sdn Bhd v Keretapi Tanah Melayu Bhd & Anor

HIGH COURT (KUALA LUMPUR)— CIVIL SUIT NO S1-22-125 OF 1994
MOHD NOOR AHMAD J
29 AUGUST 1997

Railways *— Property controlled and managed by Railway Administration — Vesting of property in Keretapi Tanah Melayu Bhd and Railway Assets Corp — Whether railway reserve has been vested in Keretapi Tanah Melayu Bhd by reason of PU(A) 294/92 — Whether aggrieved party could bring action with regard to railway reserve against Keretapi Tanah Melayu Bhd — Vesting Order (No 2) Order 1992 (PU(A) 294)*

On 23 April 1982, a lease agreement was entered into between the plaintiff and the Malaysian Railway in respect of a railway reserve. However, on 28 December 1984, the lease was terminated by the Malayan Railway Administration. Hence, the plaintiff filed a writ against the defendants seeking for specific performance or alternatively for damages. In 1991, the Railways Act 1991 repealed the Railway Ordinance, dissolved the Malayan Railway Administration, and vested all its properties in the the second defendant. Subsequently, the Minister, vide PU(A) 294, vests all property, rights or liabilities of the second defendant in the first defendant. The issue was whether railway reserve has been vested in the first defendant by reason of PU(A) 294. The senior assistant registrar allowed the first defendant's application to strike out the plaintiff's claim on the ground that there was no cause of action by the plaintiff against the first defendant. The plaintiff appealed.

Held, dismissing the appeal with costs:

What was intended by PU(A) 294 to vest in the first defendant were only rights and obligations under trading agreements and commercial agreements, but not the railway reserve itself which remained vested in the second defendant and not rights and obligations arising from or relating to leases and tenancies in respect of all railway lands (including the railway reserve). The railway reserve was railway land and was the property of the second defendant. Hence, the plaintiff had no cause of action against the first defendant (see p 645C–D).

[Bahasa Malaysia summary

Pada 23 April 1982, suatu perjanjian pajakan telah diikat di antara plaintif dan Keretapi Malaysia berkenaan dengan rizab keretapi. Walau bagaimanapun, pada 28 Disember 1984, pajakan tersebut telah ditamatkan oleh Pentadbiran Keretapi Malaya. Justeru itu, plaintif memfailkan suatu writ terhadap defendan-defendan meminta pelaksanaan spesifik atau secara alternatif untuk ganti rugi. Pada tahun 1991, Akta Keretapi 1991 telah memansuhkan Ordinan

Keretapi, membubarkan Pentadbiran Keretapi, dan meletakhak kesemua hartanya dalam defendan kedua. Berikutnya, Menteri, menerusi PU(A) 294, meletakhak segala harta, hak atau liabiliti defendan kedua dalam defendan pertama. Isu adalah sama ada rizab keretapi telah diletakhak dalam defendan pertama disebabkan PU(A) 294. Penolong kanan pendaftar membenarkan permohonan defendan pertama untuk membatalkan tuntutan plaintif atas alasan bahawa tiada kausa tindakan oleh plaintif terhadap defendan pertama. Plaintif merayu.

Diputuskan, menolak rayuan dengan kos:

Apa yang diniatkan oleh PU(A) 294 untuk diletakhak dalam defendan pertama hanyalah hak dan obligasi di bawah perjanjian perniagaan dan perjanjian komersil, bukannya rizab keretapi sendiri yang kekal diletakhak dalam defendan kedua dan bukan hak dan obligasi yang timbul daripada atau berkaitan dengan pajakan dan penyewaan berkenaan dengan segala tanah keretapi (termasuk rizab keretapi). Rizab keretapi adalah tanah keretapi dan merupakan harta defendan kedua. Justeru itu, plaintif tidak mempunyai kausa tindakan terhadap defendan pertama (lihat ms 645C–D).]

Notes

For cases on property controlled and managed by Railway Administration, see 10 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1626–1627.

Legislation referred to

Railways Act 1991 s 2
Railway Ordinance 1948 ss 16, 17
Railways (Successor Company) Act 1991 s 3(1)
Rules of the High Court 1980 O 18 r 19(1)(a)

Mah Weng Kwai (*Mah Weng Kwai & Associates*) for the appellant/plaintiff.

Jennifer J Chandran (*Allen & Gledhill*) for the respondent/first defendant.

Cur Adv Vult

Mohd Noor Ahmad J: The plaintiff appealed against the decision of the learned senior assistant registrar ('the SAR') which allowed the first defendant's application to strike out the plaintiff's claim pursuant to O 18 r 19(1)(a) of the Rules of the High Court 1980.

Briefly, on 23 April 1982, a lease agreement under seal was entered into between the plaintiff and the General Manager of the Malaysian Railway for and on behalf of the Federal Lands Commissioner in respect

of a railway reserve. The lease was for 30 years with an option to renew for a further period of 30 years at an agreed rental. However, on 28 December 1984, the lease was terminated by the Malayan Railway Administration purportedly by reason of a Government directive. Subsequently, there were negotiations between the parties to grant the plaintiff a lease on short term basis which did not materialize. Hence, the plaintiff filed a writ against the defendants seeking for specific performance or alternatively for damages.

Before the SAR, the main issues of no cause of action, frustration, acquiescence, acceptance of supplementary agreement, limitation and unlawful termination were raised. However, the SAR decided only on the issue of no cause of action by the plaintiff against the first defendant.

In his written submission, Mr Mah Weng Kwai, counsel for the plaintiff contended that as the first defendant's supporting affidavit merely averred that the plaintiff had no valid claim against the defendant, it was obvious that the first defendant's application was based on O 18 r 19(1)(a) only; that being the case, the supporting affidavit ought not to have been admitted and/or considered by the SAR by reason of sub-r (1). Assuming for a moment that he is right, my view is that, in scrutinizing the four corners of the pleadings on the issue whether there is a cause of action, the court is entitled to consider the relevant provisions of the law in arriving at a conclusion because laws are matters for submission which need not be averred in an affidavit. The pleadings filed contain sufficient facts. Hence, the court is in the position to decide on the issue.

The relevant laws are the Railway Ordinance 1948, the Railways Act 1991 (Act 463) and the Railways (Successor Company) Act 1991 (Act 464). Both of the latter Acts came into force on 12 September 1991. Upon the repeal of the Railway Ordinance by Act 463, the Malayan Railway Administration was dissolved and all its property (including land), rights and liabilities were vested in the second defendant. Section 3(1) of Act 464 empowers the Minister to appoint a vesting date on which all property (including land), rights or liabilities of the second defendant are to be vested in the first defendant. In the exercise of such power, the Minister made two orders, viz PU (A) 279 dated 17 July 1992 and PU(A) 294 dated 30 July 1992. The former is not relevant for the present purpose because it relates to the vesting of all rolling stocks of the second defendant in the first defendant. The latter is, which provides as follows:

> In exercise of the powers conferred by s 3(1) of the Railways (Successor Company) Act 1991, the Minister makes the following order:
>
> 1 This Order may be cited as the Vesting Date (No 2) Order 1992 and shall come into force on the 1st August 1992.
>
> 2 The Minister appoints 1st August 1992 as the vesting date and on that date all operating assets, rights and liabilities of the Railway Assets Corporation as specified in the Schedule shall be transferred to and vested in the successor company (KERETAPI TANAH MELAYU BERHAD) without any conveyance, assignment, or transfer whatever.

SCHEDULE

PART I

PROPERTY (OTHER THAN LANDS AND BUILDINGS)

1 Current assets including cash and balance at banks, fixed deposits, inventories, capital spares and investments in companies and the money market.

2 All machineries needed for maintenance.

3 All rail motor vehicles.

4 All office equipment, furniture and fittings including computer installations and software.

5 All commercial and non-commercial vehicles.

PART II

RIGHTS AND LIABILITIES

1 Rights and obligations under trading agreements and commercial agreements other than those arising from or relating to leases and tenancies in respect of all railway lands.

2 Rights and obligations in respect of —

(a) the syndicated loan from Amanah Merchant Bank Berhad and other lenders pursuant to an agreement dated 21st May 1991;

(b) the term loan from United Malayan Banking Corporation Berhad pursuant to an agreement dated 18th June 1990; and

(c) overdraft and bank credit facilities;

3 Trade creditors;

4 Deposits including retention monies;

5 Liabilities in respect of claims involving railway accidents including claims by any third party in respect of damage to goods under any contract of carriage; ... .

Section 2 of the Railway Ordinance defines 'railway land' as land vested or held by the Federal Lands Commissioner or any other person for the purposes of the railway and land in the occupation, or under the control, of the Malayan Railway Administration, and includes railway reserves. And 'railway reserves' is defined as all lands duly reserved for the purposes of the railway under the previous land laws of the relevant States and all lands deemed to be railway reserves under ss 16 or 17. Act 463 does not define 'railway land' but s 2 defines 'railway reserves' more or less on the same line as the Railway Ordinance except that the National Land Code 1965 is mentioned therein and ss 16 and 17 of the Railway Ordinance are saved. 'Property' is defined by the three laws to include land and the rights thereto. In my opinion, it is evidently clear that a distinction between railway land and railway reserves is maintained in the legislations and a railway reserve is property as defined. The said property by virtue of s 92(2) of Act 463 had been vested in the second defendant. Now what has to be considered is whether the said property has been vested in the first defendant by reason of PU(A) 294. Part I of the Schedule is concerned with the property of the second defendant other than lands and buildings

A and Pt II deals with rights and liabilities of the second defendant. Under para 1 of this Part, the rights and obligations under trading agreements and commercial agreements, other than those arising from or relating to leases and tenancies in respect of all railway lands are vested in the first defendant. 'Rights' is defined by s 2 of Act 464 as all rights, powers, privileges and immunities, whether actual, contingent or prospective; and 'liabilities' is defined as liabilities, debts, charges, duties and obligations of every description (whether present or future, actual or contingent, and whether payable or to be observed or performed in Malaysia or elsewhere). I am of the view that what has been intended to vest in the first defendant are only rights and obligations under trading agreements and commercial agreements, but not the railway reserve itself which remains vested in the second defendant and not rights and obligations arising from or relating to leases and tenancies in respect of all railway lands (including the railway reserve). The distinction maintained by the laws between 'railway lands' and 'railway reserves' does not alter the position. The distinction is merely in terms of usage. The railway reserve is railway land and is the property of the second defendant. Hence, the plaintiff's case is obviously unarguable, and therefore, the plaintiff has no cause of action against the first defendant. On this ground alone as concluded by the SAR, the first defendant's application ought to be allowed.

Now, returning to Mr Mah's contention as stated in the fourth paragraph above, with due respect, my view is that such contention is untenable. As the first defendant has clearly stated in the application that the grounds for striking out the plaintiff's claim are based on r 19(1)(a), (b), (c) and (d), the first defendant is entitled to rely on affidavit evidence in support thereof. The grounds need not be repeated in the affidavit because the citation of the law on which the application is based would suffice and that the evidence thereto has been deposed therein. As the first defendant succeeds on r 19(1)(a), the other issues need not be considered.

Therefore, the appeal is dismissed with costs here and below.

Appeal dismissed with costs.

Reported by Loo Lai Mee